# Round 1—Neg vs MN MW

## 1NC

### 1nc 1

#### The 1AC’s attempt to find the ‘legitimate’ use of violence is intrinsically linked to the creation of a hierarchy of life that has been used to justify nonhuman subjugation—this hierarchy rests at the heart of the legal system – this distinction not only ensures continued species war but is the foundation behind any form of violence against the Other.

**Kochi 9** - Sussex Law School, University of Sussex, Brighton, UK (Tarik “Species War: Law, Violence and Animals”)

The distinction between bare life and the good life is a legal-political distinction. It has, at least since Aristotle, resided at the foundation of Western legal and political theory. The law which holds together and  governs the political community is posited with the view of not merely sustaining the bare needs of life, but of establishing and realizing some form of the good life. However, the distinction between bare life and the good life already contains within it a prior distinction, one which arises when the survival of humans is distinguished from and affirmed against the survival of  non-human animals. At the basis of the distinction between bare life and the good life, and hence, at the basis of law, resides the human-animal distinction – a determination of value that the human form of life is good and that it is worth more or better than the lives of  non-human animals. There is a certain Nietzschean sense of the term “good” which can be drawn upon informatively here. My argument is that what occurs prior to the racial and aristocratic senses of the term “good” suggested by Nietzsche as residing genealogically with the concept of the “good life,” is more deeply, an elevated sense of life-worth that humans in the West have historically ascribed to themselves over and above the life-worth of non-human animals. Following this, when the meaning of the term “war” is explained by legal and political theorists with reference to either the concepts of survival or the good life, the linguistic and conceptual use of the term war already contains within it a value-laden human-animal distinction and the primary violence of species war. Survival   and  the  biological   imperative   (survive!)  maybe   seen  as components of a concept of “war” broadly defined. For non-human animals the killing and violence that takes place between them (and with respect to their eating of plant life) may be viewed not as species war but merely as action driven by the biological imperative. However, for humans the acts of killing and violence directed at non-human animals can be understood as species war. While such violence and killing may be thought to be driven, in part, by the biological imperative, these acts also take place within the context of normative judgments made with respect to a particular notion of the good often drawing upon a cosmic hierarchy of life-value established by religious theories of creation or scientific theories of evolution. This reflection need not be seen as carried out by every individual on a daily basis but rather as that which is drawn upon from time to time within public life as humans inter-subjectively coordinate their actions in accordance with particular enunciated ends and plan for the future. In this respect, the violence and killing of species war is not simply a question of survival or bare life, instead, it is bound up with a consideration of the good. For most modern humans in the West the “good life” involves the daily killing of animals for dietary need and for pleasure. At the heart of the question of species war, and all war for that matter, resides a question about the legitimacy of violence linked to a philosophy of value. The question of war-law sits within a wider history of decision making about the relative values of different forms of life. “Legitimate” violence is under-laid by cultural, religious, moral, political and philosophical conceptions about the relative values of forms of life. Playing out through history are distinctions and hierarchies of life-value that are extensions of the original human-animal distinction. Distinctions that can be thought to follow from the human-animal distinction are those, for  example, drawn between: Hellenes and barbarians; Europeans and Orientals; whites and blacks; the “civilized” and the “uncivilized”; Nazis and Jews; Israeli’s and Arabs; colonizers and the colonized. Historically these practices and regimes of violence have been culturally, politically and legally normalized in a manner that replicates the normalization of the violence carried out against non-human animals. Unpacking, criticizing and challenging the forms of violence, which in different historical moments appear as “normal,” is one of the ongoing tasks of any critic who is concerned with the question of what war does to law and of what law does to war? The critic of war is thus a critic of war’s normalization. Unpacking, criticizing and challenging the forms of violence, which in different historical moments appear as "normal," is one of the ongoing tasks of any critic who is concerned with the question of what war does to law and of what law does to war? The critic of war is thus a critic of war's norm-alization.

#### And the hierarchy between the human and nonhuman leads to billions of deaths per year and categorically outweighs. Unabated anthropocentrism is the only thing which can guarantee planetary extinction

Best 7 – Associate Professor at the University of Texas in the Department of Humanities and Philosophy (Steven, “Eternal Treblinka: Our Treatment of Animals and the Holocaust, by Charles Patterson” *Journal for Critical Animal Studies*, <http://www.criticalanimalstudies.org/JCAS/Journal_Articles_download/Issue_7/bestpatterson.pdf>)

Too manypeople with pretences to ethics, compassion, decency, justice, love, and other stellar values of humanity at its finestresist the profound analogies between animal and human slavery and animal and human holocausts, in order to devalue or trivialize animal suffering and avoid the responsibility of the weighty moral issues confronting them. The moral myopia of humanism is blatantly evident when people who have been victimized by violence and oppression decry the fact that they “were treated like animals” – as if it is acceptable to brutalize animal, but not humans**.** If there is a salient disanalogy or discontinuity between the tyrannical pogroms launched against animals and humans, it lies not in the fallacious assumption that animals do not suffer physical and mental pain similar to humans, but rather that animals suffer more than humans, both quantitatively (the intensity of their torture, such as they endure in fur farms, factory farms, and experimental laboratories) and qualitatively (the number of those who suffer and die). And while few oppressed human groups lack moral backing, sometimes on an international scale, one finds not mass solidarity with animals but rather mass consumption of them. As another Nobel Prize writer in Literature, South African novelist writer J. M. Coetzee, forcefully stated: “Let me say it openly: we are surrounded by an enterprise of degradation, cruelty, and killing which rivals anything the Third Reich was capable of, indeed dwarfs it, in that ours is an enterprise without end, self-regenerating, bringing rabbits, rats, poultry, livestock ceaselessly into the world for the purpose of killing them.”37 Every year, throughout the world, over 45 billion farmed animals currently are killed for food consumption.38 This staggering number is nearly eight times the present human population. In the US alone, over 10 billion animals are killed each year for food consumption – 27 million each day, nearly 19,000 per minute. Of the 10 billion land animals killed each year in the US, over 9 billion are chickens; every day in the US, 23 million chickens are killed for human consumption, 269 per second. In addition to the billions of land animals consumed, humans also kill and consume 85 billion marine animals (17 billion in the US).39 Billions more animals die in the name of science, entertainment, sport, or fashion (i.e., the leather, fur, and wool industries), or on highways as victims of cars and trucks. Moreover, ever more animal species vanish from the earth as we enter the sixth great extinction crisis in the planet’s history, this one caused by human not natural events, the last one occurring 65 million years ago with the demise of the dinosaurs and 90% of all species on the planet. It is thus appropriate to recall the saying by English clergyman and writer, William Ralph Inge, to the effect that: "We have enslaved the rest of the animal creation, and have treated our distant cousins in fur and feathers so badly that beyond doubt, if they were able to formulate a religion, they would depict the Devil in human form."

The construction of industrial stockyards, the total objectification of nonhuman animals, and the mechanized murder of innocent beings should have sounded a loud warning to humanity that such a process might one day be applied to them, as it was in Nazi Germany. If humans had not exploited animals, moreover, they might not have exploited humans, or, at the very least, they would not have had handy conceptual models and technologies for enforcing domination over others. “A better understanding of these connections,” Patterson states, “should help make our planet a more humane and livable place for all of us – people and animals alike, A new awareness is essential for the survival of our endangered planet.”40

#### The alt is an absolute disavowal of the law—refusing to operate within an anthropocentric hierarchy is critical to breaking down the logical underpinnings of biopolitical violence

**Pugliese 13** – Research Director at Macquarie University (Joseph, “State Violence and the Execution of Law: Biopolitical Caesurae of Torture, Black Sites, Drones,” p.95-97)

\*reject gendered language

Critically, the 'solution' to this regime of violence is not to shuffle the categories of life up or down the biopolitical hierarchy as this merely reproduces the system while leaving intact the governing power of the biopolitical cut andits attendant violent effects. Reflecting on the possibility of disrupting this biopolitical regime and its hierarchies of life, Agamben writes:

in our culture man has always been the result of a simultaneous division and articulation of the animal and thehuman, in which one of the two terms of the operation was what was at stake in it. To render inoperative the machine that governs our conception of man will therefore mean no longer to seek new - more effective or authentic- articulations, but rather to show the central emptiness, the hiatus that - within man - separates man and animal, and to risk ourselves in this emptiness: the suspension of the suspension. 21

Precisely because everything is always already at stake in the continued mobilization of biopolitical caesurae, the seeking of new articulations of life that will be valorized as more 'authentic' will merely reproduce the machine without having eliminated its capacity for violence as ensured by the re-articulation of the biopolitical cut. Looking back at the biopolitical infrastructure of the Nazi state, one can clearly see the imbrication of ecology, the regime of animal rights, and the racio-speciesist branding of Jews as collectively exemplifying the dangers of seeking more'authentic' articulations of animals and humans that are predicated on the biopolitical division and its capacity for inversions and recalibrations while leaving the violent order of the biopolitical regime intact. The Nazis effectively called for a more 'authentic' relation to nature ('blood and soil') that was buttressed by animal rights (Reich AnimalProtection laws) and the rights of nature (Reich Law on the Protection of Nature). 22 Animals and nature werethereby recalibrated up the speciesist scale at the expense of Jews. Deploying the violence of racio-speciesism, the Nazis animalized Jews as 'rats,' 'vermin' and other low life forms, situated them at the bottom of the biopolitical hierarchy, and then proceeded to enact the very cruelty and exterminatory violence (cattle car transport, herding incamps replicating stockyards and the industrialized killing procedures of animal slaughterhouses) that they hadoutlawed against animals. The Nazi state also exemplifies the manner in which the regime of (animal) rights can be perfectly accommodated within the most genocidal forms of state violence. This is so, precisely because the prior conceptof human rights is always-already founded on the human/animal biopolitical caesura and its asymmetry of power — otherwise the very categories of 'human' and 'animal' rights would fail to achieve cultural intelligibility. The paternal distribution of rights to non-human animals still pivots on this asymmetrical a priori. Even as it extends its seemingly benevolent regime of rights and protections to animals, rights discourse, by disavowing this violent a priori, merely reproduces the species war by other means

In order to short-circuit this machine, a deconstructive move is needed, a move that refuses to participate in the mereoverturning of the binarized hierarchy, for example: animal > human, and that effectively displaces the hierarchy bydisclosing the conceptual aporias that drive it. The challenge is to proceed to inhabit the hiatus, to run the risk of living the'emptiness' of an atopical locus that is neither animal nor human. This non-foundational locus is the space that Agamben designates as 'the open,' marked by the 'reciprocal suspension of the two terms [human/animal], something for which we perhaps have no name and which is neither animal nor [hujman [and that] settles in between nature and humanity.' Critically, the reciprocal suspension articulates 'the play between the two terms, their immediate constellation in a non-coincidence.' 2 \* In naming their constellation in a non-coincidence, Agamben enunciates the possibility of a Levinasian ethics that refuses the anthropocentric assimilation of the Other/animal/nature into the imperialism of the Same/human.The urgent necessity of instigating the move to render inoperative this anthropocentric regime is not incidental to the violent biopolitical operations of the state. On the contrary, state violence is virulently animated by the logic of the biopolitical caesura and its 'anthropological machine' - which 'produce [s] the human through the suspension and captureof the inhuman.' 21 The anthropocentrism that drives this biopolitical regime ensures that whatever is designated as non-human-animal life continues to be branded not only as expendable and as legitimately enslaveable but as the quintessential'unsavable figure of life.' 25 The aporetic force that drives this regime is exposed with perverse irony in one of the entries of the al-Qahtani interrogation log, which documents an interrogator reading to the detainee in the course of his torturesession two quotes from the book Wlmt Makes a Terrorist and Why?: 'The second quote pointed out that the terrorist mustdehumanize their victims and avoid thinking in terms of guilt or innocence.' In the context of the post-9/11 US gulags, this biopolitical regime of state terror is what guarantees the production of captive life that can be tortured with impunity andthat, moreover, enables its categorization as unsavable. Once captive life is thus designated, it can be liquidated withoutcompunction - without having to think 'in terms of guilt or innocence.

### 1nc 2

#### The 1AC’s attempt to reign in the executive by placing faith in the law only serves to legalize the violent nature of the law itself

**Smith 2** – prof of phil @ U of South Florida

(Thomas, International Studies Quarterly 46, The New Law of War: Legitimizing Hi-Tech and Infrastructural Violence)

The role of military lawyers in all this has, according to one study, “changed irrevocably” ~Keeva, 1991:59!. Although liberal theorists point to the broad normative contours that law lends to international relations, the Pentagon wields law with technical precision. During the Gulf War and the Kosovo campaign, JAGs opined on the legal status of multinational forces, the U.S. War Powers Resolution, rules of engagement and targeting, country fly-overs, maritime interceptions, treatment of prisoners, hostages and “human shields,” and methods used to gather intelligence. Long before the bombing began, lawyers had joined in the development and acquisition of weapons systems, tactical planning, and troop training. In the Gulf War, the U.S. deployed approximately 430 military lawyers, the allies far fewer, leading to some amusing but perhaps apposite observations about the legalistic culture of America ~Garratt, 1993!. Many lawyers reviewed daily Air Tasking Orders as well as land tactics. Others found themselves on the ground and at the front. According to Colonel Rup- pert, the idea was to “put the lawyer as far forward as possible” ~Myrow, 1996–97!. During the Kosovo campaign, lawyers based at the Combined Allied Operations Center in Vicenza, Italy, and at NATO headquarters in Brussels approved every single targeting decision. We do not know precisely how decisions were taken in either Iraq or Kosovo or the extent to which the lawyers reined in their masters. Some “corrections and adjustments” to the target lists were made ~Shot- well, 1993:26!, but by all accounts the lawyers—and the law—were extremely accommodating.¶ The exigencies of war invite professional hazards as military lawyers seek to “find the law” and to determine their own responsibilities as legal counselors. A 1990 article in Military Law Review admonished judge advocates not to neglect their duty to point out breaches of the law, but not to become military ombuds- men either. The article acknowledged that the JAG faces pressure to demonstrate that he can be a “force multiplier” who can “show the tactical and political soundness of his interpretation of the law” ~Winter, 1990:8–9!. Some tension between law and necessity is inevitable, but over the past decade the focus has shifted visibly from restraining violence to legitimizing it. The Vietnam-era perception that law was a drag on operations has been replaced by a zealous “client culture” among judge advocates. Commanding officers “have come to realize that, as in the relationship of corporate counsel to CEO, the JAG’s role is not to create obstacles, but to find legal ways to achieve his client’s goals—even when those goals are to blow things up and kill people” ~Keeva, 1991:59!. Lt. Col. Tony Montgomery, the JAG who approved the bombing of the Belgrade television studios, said recently that “judges don’t lay down the law. We take guidance from our government on how much of the consequences they are willing to accept” ~The Guardian, 2001!.¶ Military necessity is undeterred. In a permissive legal atmosphere, hi-tech states can meet their goals and remain within the letter of the law. As noted, humanitarian law is firmest in areas of marginal military utility. When opera- tional demands intrude, however, even fundamental rules begin to erode. The Defense Department’s final report to Congress on the Gulf War ~DOD, 1992! found nothing in the principle of noncombatant immunity to curb necessity. Heartened by the knowledge that civilian discrimination is “one of the least codified portions” of the law of war ~p. 611!, the authors argued that “to the degree possible and consistent with allowable risk to aircraft and aircrews,” muni- tions and delivery systems were chosen to reduce collateral damage ~p. 612!. “An attacker must exercise reasonable precautions to minimize incidental or collat- eral injury to the civilian population or damage to civilian objects, consistent with mission accomplishments and allowable risk to the attacking forces” ~p. 615!. The report notes that planners targeted “specific military objects in populated areas which the law of war permits” and acknowledges the “commingling” of civilian and military objects, yet the authors maintain that “at no time were civilian areas as such attacked” ~p. 613!. The report carefully constructed a precedent for future conflicts in which human shields might be deployed, noting “the presence of civilians will not render a target immune from attack” ~p. 615!. The report insisted ~pp. 606–607! that Protocol I as well as the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons “were not legally applicable” to the Gulf War because Iraq as well as some Coalition members had not ratified them. More to the point that law follows practice, the report claimed that certain provisions of Protocol I “are not a codification of the customary practice of nations,” and thus “ignore the realities of war” ~p. 616!.¶ Nor can there be any doubt that a more elaborate legal regime has kept pace with evolving strategy and technology. Michael Ignatieff details in Virtual War ~2000! how targets were “developed” in 72-hour cycles that involved collecting and reviewing aerial reconnaissance, gauging military necessity, and coding antici- pated collateral damage down to the directional spray of bomb debris. A judge advocate then vetted each target in light of the Geneva Conventions and calcu- lated whether or not the overall advantage to be gained outweighed any expected civilian spillover. Ignatieff argues ~2000:198–199! that this elaborate symbiosis of law and technology has given birth to a “veritable casuistry of war.” Legal fine print, hand-in-hand with new technology, replaced deeper deliberation about the use of violence in war. The law provided “harried decision-makers with a critical guarantee of legal coverage, turning complex issues of morality into technical issues of legality.” Astonishingly fine discrimination also meant that unintentional civilian casualties were assumed to have been unintentional, not foreseen tragedies to be justified under the rule of double effect or the fog of war. The crowning irony is that NATO went to such lengths to justify its targets and limit collateral damage, even as it assured long-term civilian harm by destroy- ing the country’s infrastructure.¶ Perhaps the most powerful justification was provided by law itself. War is often dressed up in patriotic abstractions—Periclean oratory, jingoistic newsreels, or heroic memorials. Bellum Americanum is cloaked in the stylized language of law. The DOD report is padded with references to treaty law, some of it obscure, that was “applicable” to the Gulf War, as if a surfeit of legal citation would convince skeptics of the propriety of the war. Instances of humane restraint invariably were presented as the rule of law in action. Thus the Allies did not gas Iraqi troops, torture POWs, or commit acts of perfidy. Most striking is the use of legal language to justify the erosion of noncombatant immunity. Hewing to the legal- isms of double effect, the Allies never intentionally targeted civilians as such. As noted, by codifying double effect the law artificially bifurcates intentions. Har- vard theologian Bryan Hehir ~1996:7! marveled at the Coalition’s legalistic word- play, noting that the “briefers out of Riyadh sounded like Jesuits as they sought to defend the policy from any charge of attempting to directly attack civilians.”¶ The Pentagon’s legal narrative is certainly detached from the carnage on the ground, but it also oversimplifies and even actively obscures the moral choices involved in aerial bombing. Lawyers and tacticians made very deliberate decisions about aircraft, flight altitudes, time of day, ordnance dropped, confidence in intelligence, and so forth. By expanding military necessity to encompass an extremely prudential reading of “force protection,” these choices were calculated to protect pilots and planes at the expense of civilians on the ground, departing from the just war tradition that combatants assume greater risks than civilians. While it is tempting to blame collateral damage on the fog of war, much of that uncertainty has been lifted by technology and precision law. Similarly, in Iraq and in Yugoslavia the focus was on “degrading” military capabilities, yet a loose view of dual use spelled the destruction of what were essentially social, economic, and political targets. Coalition and NATO officials were quick to apologize for accidental civilian casualties, but in hi-tech war most noncombatant suffering is by design.¶ Does the law of war reduce death and destruction? International law certainly has helped to delegitimize, and in rare cases effectively criminalize, direct attacks on civilians. But in general humanitarian law has mirrored wartime practice. On the ad bellum side, the erosion of right authority and just cause has eased the path toward war. Today, foreign offices rarely even bother with formal declara- tions of war. Under the United Nations system it is the responsibility of the Security Council to denounce illegal war, but for a number of reasons its mem- bers have been extremely reluctant to brand states as aggressors. If the law were less accommodating, greater effort might be devoted to diplomacy and war might be averted. On the in bello side the ban on direct civilian strikes remains intact, but double effect and military demands have been contrived to justify unnecessary civilian deaths. Dual use law has been stretched to sanction new forms of violence against civilians. Though not as spectacular as the obliteration bombing to which it so often is favorably compared, infrastructural war is far deadlier than the rhetoric of a “clean and legal” conflict suggests. It is true that rough estimates of the ratio of bomb tonnage to civilian deaths in air attacks show remarkable reductions in immediate collateral damage. There were some 40.83 deaths per ton in the bombing of Guernica in 1937 and 50.33 deaths per ton in the bombing of Tokyo in 1945. In the Kosovo campaign, by contrast, there were between .077 and .084 deaths per ton. In Iraq there were a mere .034 ~Thomas, 2001:169!. According to the classical definition of collateral damage, civilian protection has improved dramatically, but if one takes into account the staggering long-term effects of the war in Iraq, for example, aerial bombing looks anything but humane.¶ For aerial bombers themselves modern war does live up to its clean and legal image. While war and intervention have few steadfast constituents, the myth of immaculate warfare has eased fears that intervening soldiers may come to harm, which polls in the U.S., at least, rank as being of great public concern, and even greater military concern. A new survey of U.S. civilian and military attitudes found that soldiers were two to four times more casualty-averse than civilians thought they should be ~Feaver and Kohn, 2001!. By removing what is perhaps the greatest restraint on the use of force—the possibility of soldiers dying—law and technology have given rise to the novel moral hazards of a “postmodern, risk-free, painless war” ~Woollacott, 1999!. “We’ve come to expect the immacu- late,” notes Martin Cook, who teaches ethics at the U.S. Army War College in Carlisle, PA. “Precision-guided munitions make it very much easier to go to war than it ever has been historically.” Albert Pierce, director of the Center for the Study of Professional Military Ethics at the U.S. Naval Academy argues, “standoff precision weapons give you the option to lower costs and risks . . . but you might be tempted to do things that you might otherwise not do” ~Belsie, 1999!.¶ Conclusion¶ The utility of law to legitimize modern warfare should not be underestimated. Even in the midst of war, legal arguments retain an aura of legitimacy that is missing in “political” justifications. The aspirations of humanitarian law are sound. Rather, it is the instrumental use of law that has oiled the skids of hi-tech violence. Not only does the law defer to military necessity, even when very broadly defined, but more importantly it bestows on those same military demands all the moral and psychological trappings of legality. The result has been to legalize and thus to justify in the public mind “inhumane military methods and their consequences,” as violence against civilians is carried out “behind the protective veil of justice” ~af Jochnick and Normand, 1994a:50!. Hi-tech states can defend hugely destructive, essentially unopposed, aerial bombardment by citing the authority of seemingly secular and universal legal standards. The growing gap between hi- and low-tech means may exacerbate inequalities in moral capital as well, as the sheer barbarism of “premodern” violence committed by ethnic cleansers or atavistic warlords makes the methods employed by hi-tech warriors seem all the more clean and legal by contrast.¶ This fusion of law and technology is likely to propel future American interventions. Despite assurances that the campaign against terrorism would differ from past conflicts, the allied air war in Afghanistan, marked by record numbers of unmanned drones and bomber flights at up to 35,000 feet, or nearly 7 miles aloft, rarely strayed from the hi-tech and legalistic script. While the attack on the World Trade Center confirmed a thousand times over the illegality and inhu- manity of terrorism, the U.S. response has raised further issues of legality and inhumanity in conventional warfare. Civilian deaths in the campaign have been substantial because “military objects” have been targeted on the basis of extremely low-confidence intelligence. In several cases targets appear to have been chosen based on misinformation and even rank rumor. A liberal reading of dual use and the authorization of bombers to strike unvetted “targets of opportunity” also increased collateral damage. Although 10,000 of the 18,000 bombs, missiles, and other ordnance used in Afghanistan were precision-guided munitions, the war resulted in roughly 1000 to 4000 direct civilian deaths, and, according to the UNHCR, produced 900,000 new refugees and displaced persons. The Pentagon has nevertheless viewed the campaign as “a more antiseptic air war even than the one waged in Kosovo” ~Dao, 2001!. General Tommy Franks, who commanded the campaign, called it “the most accurate war ever fought in this nation’s history” ~Schmitt, 2002!.9¶ No fundamental change is in sight. Governments continue to justify collateral damage by citing the marvels of technology and the authority of international law. One does see a widening rift between governments and independent human rights and humanitarian relief groups over the interpretation of targeting and dual-use law. But these disputes have only underscored the ambiguities of human- itarian law. As long as interventionist states dominate the way that the rules of war are crafted and construed, hopes of rescuing law from politics will be dim indeed.

#### The impact outweighs—to tolerate violence to the slightest degree is to engender war as the solution to all problems—this frames all impacts and precludes socially just policymaking

Lawrence 9 (Grant, “Military Industrial "War" Consciousness Responsible for Economic and Social Collapse,” OEN—OpEdNews, March 27)

As a presidential candidate, [Barack Obama](http://obama.senate.gov/) called [Afghanistan](http://en.wikipedia.org/wiki/War_in_Afghanistan_%282001%E2%80%93present%29) ''the war we must win.'' He was absolutely right. Now it is time to win it... Senators [John McCain](http://www.imdb.com/name/nm0564587/) and Joseph Lieberman [calling](http://www.miamiherald.com/opinion/inbox/story/960269.html) for an expanded war in Afghanistan "How true it is that war can destroy everything of value." Pope Benedict XVI [decrying](http://www.google.com/hostednews/afp/article/ALeqM5iuue8kE-e0lYZVFpt4RlbX4M_IEw) the suffering of Africa Where troops have been quartered, brambles and thorns spring up. In the track of great armies there must follow lean years. Lao Tzu on [War](http://www.sacred-texts.com/tao/salt/salt09.htm) As Americans we are raised on the utility of war to conquer every problem. We have a drug problem so we wage war on it. We have a cancer problem so we wage war on it. We have a crime problem so we wage war on it. Poverty cannot be dealt with but it has to be warred against. Terror is another problem that must be warred against. In the [United States](http://maps.google.com/maps?ll=38.8833333333,-77.0166666667&spn=10.0,10.0&q=38.8833333333,-77.0166666667%20%28United%20States%29&t=h), solutions can only be found in terms of wars. In a society that functions to support a massive military industrial war machine and empire, it is important that the terms promoted support the conditioning of its citizens. We are conditioned to see war as the solution to major social ills and major political disagreements. That way when we see so much of our resources devoted to war then we don't question the utility of it. The term "war" excites mind and body and creates a fear mentality that looks at life in terms of attack. In war, there has to be an attack and a must win attitude to carry us to victory. But is this war mentality working for us? In an age when nearly half of our tax money goes to support the war machine and a good deal of the rest is going to support the elite that control the war machine, we can see that our present war mentality is not working. Our values have been so perverted by our war mentality that we see sex as sinful but killing as entertainment. Our society is dripping violence. The violence is fed by poverty, social injustice, the break down of family and community that also arises from economic injustice, and by the managed media. The cycle of violence that exists in our society exists because it is useful to those that control society. It is easier to sell the war machine when your population is conditioned to violence. Our military industrial consciousness may not be working for nearly all of the life of the planet but it does work for the very few that are the master manipulators of our values and our consciousness. Rupert Murdoch, the media monopoly man that runs the "Fair and Balanced" [Fox Network](http://www.fox.com/), Sky Television, and [News Corp](http://www.newscorp.com/) just to name a few, [had](http://en.wikipedia.org/wiki/Rupert_Murdoch) all of his 175 newspapers editorialize in favor of the [Iraq war](http://en.wikipedia.org/wiki/Iraq_War). Murdoch snickers when [he says](http://www.newscorpse.com/ncWP/?p=341) "we tried" to manipulate public opinion." The Iraq war was a good war to Murdoch [because,](http://www.americanprogress.org/issues/2004/07/b122948.html) "The death toll, certainly of Americans there, by the terms of any previous war are quite minute." But, to the media manipulators, the phony politicos, the military industrial elite, a million dead Iraqis are not to be considered. War is big business and it is supported by a war consciousness that allows it to prosper. That is why more war in Afghanistan, the war on Palestinians, and the other wars around the planet in which the [military industrial complex](http://en.wikipedia.org/wiki/Military-industrial_complex) builds massive wealth and power will continue. The military industrial war mentality is not only killing, maiming, and destroying but it is also contributing to the present social and economic collapse. As mentioned previously, the massive wealth transfer that occurs when the American people give half of their money to support death and destruction is money that could have gone to support a just society. It is no accident that after years of war and preparing for war, our society is crumbling. Science and technological resources along with economic and natural resources have been squandered in the never-ending pursuit of enemies. All of that energy could have been utilized for the good of humanity, ¶ instead of maintaining the power positions of the very few super wealthy. So the suffering that we give is ultimately the suffering we get. Humans want to believe that they can escape the consciousness that they live in. But that consciousness determines what we experience and how we live. As long as we choose to live in "War" in our minds then we will continue to get "War" in our lives. When humanity chooses to wage peace on the world then there will be a flowering of life. But until then we will be forced to live the life our present war consciousness is creating.

#### Nonviolence is an existential and ethical imperative—militaristic mindsets are the driving force for all forms of conflict and environmental destruction

**Burrowes 13**—Fellowship of Reconciliation

(Robert, “Life on the Line: Can Humanity Survive?”, <http://forusa.org/blogs/robert-j-burrowes/life-line-can-humanity-survive/12483>, dml)

As we approach the International Day of Nonviolence on October 2, which recognizes Mahatma Gandhi’s birthday, one challenge we face is to celebrate his life in a way that Gandhi himself would have found meaningful. Gandhi was not a man of token gestures. His life was dedicated to his search for the Truth and guided by his passionate belief that nonviolence was the means to reach it. He was a visionary who was profoundly aware of **the damage human violence is doing to** ourselves**,** each other **and** the Earth.

Despite his example, most of us are familiar with those horror lists that reveal the extent of our ongoing violence. Here is a sample just to refresh your memory.

Human beings spend $2,000,000,000 each day on military violence, **the sole purpose of which is to terrorize and kill fellow human beings**. And we are poised on the brink of dramatically expanding the war against Syria with unknown (and **possibly nuclear**) consequences for us all. Because we spend so many resources on military violence, one human being in Africa, Asia, or Central/South America **is starved to death every two or three seconds** — **that is** 35,000 people each day — and poverty and homelessness continue their relentless expansion in industrialized countries. In addition to this problem, “**water starvation**” is becoming a frequent reality for many people and **the collapse of hydrological systems is** now expected by 2020. Human activity drives 200 species of life (birds, animals, fish, insects) **to extinction each day** and 80% of the world’s forests and over 90% of the large fish in the ocean **are already gone**.

As polluters, humans are supreme: Eighty-one tons of mercury — the most toxic heavy metal in existence — is emitted into the atmosphere each year **as a result of electric power generation**; there are 46,000 pieces of floating plastic in every square mile of ocean; and each year we dump **billions of kilograms of pesticides** into the environment, which pollutes the groundwater and seriously damages human health. Moreover, as everyone knows, we pump vast quantities of carbon dioxide into the atmosphere and release radioactive contaminants into the environment too.

How serious is this? According to James Hansen and colleagues, ongoing burning of fossil fuels at the current rate will cause **catastrophic levels of global warming** and burning all fossil fuels ‘**would make most of the planet** uninhabitable by humans**’**. (See “Climate sensitivity, sea level and atmospheric carbon dioxide”.) And, according to Layne Hartsell and Emanuel Pastreich, commenting on just one aspect of the radioactive contamination problem, “Radiation continues to leak from the crippled Fukushima Daiichi site into groundwater, threatening to contaminate the entire Pacific Ocean.” (See “Peer-to-Peer Science: The Century-Long Challenge to Respond to Fukushima.”)

Can humanity survive? **The odds are** now stacked heavily against us: despite the persistent warnings of visionaries, such as Gandhi, and scientists since the 1940s, **we have breached** far too many limits **that it would have been wise to respect**. And the forces still arrayed against us, particularly those corporations that profit from this violence as well as their political puppets, **are not going to give way without a struggle**. Moreover, **they can use** education systems and the corporate media to try to manipulate us into believing what they want, whether it is their denials of reality or that our resistance cannot work. In addition, they have the police, legal, and prison systems to inflict more violence upon us when we do find the courage to resist.

But there is good news too. The good news is that there are a lot of great people. And by “great people” I mean ordinary people like you and me **who are willing to** listen to the truth **and then do something tangible** to make a difference, sometimes by taking no risk at all and sometimes by taking a small, shared risk. So what can we do?

#### The alternative is a pedagogical commitment to non-violence—refuse the forced choice of the 1AC, interrogating the discursive frames through which its violence is justified is a prerequisite to any ethically tenable political action

**Evans 13**—Lecturer in the School of Politics and International Studies at the University of Leeds and Programme Director for International Relations [the word “a” has been added for correct sentence structure and is denoted by brackets]

(Brad, “INAUGURAL STATEMENT”, On Violence 1:1, 2-6, dml)

Violence is a complex phenomenon that defies neat description. It cannot be reduced to simple explanations, for as many of its victims tell, **there is no totalizing truth about violence**. Nor can the experience of violence be universalized or merely thought of **in terms of** **some** institutional breakdown **or** failure of State. Not only do the most abhorrent acts of violence seemingly happen **when the state system works all too well**; to speak of violence in such terms denies the personal account or at least renders **insignificant** what we may term **the subjective stakes** to the horrifying encounter. The “subject of violence” is always about violent and violated subjects. Violence then is not some objective condition or natural state of affairs. **It is a process that all too often appears to be reasoned and brutally calculated**. To begin theorizing and critiquing violence as such is to accept that the very form of the enquiry we have chosen to engage enters us **into the most dangerous and politically fraught terrain**. Violence is never is **[a] problem to be studied in some** objective **or** neutral **fashion**. It brings to the fore most clearly the realization that education **and** critical pedagogy **are by definition** forms of political intervention. In light of this, we can argue that any critique of violence is not a challenge that should be avoided; on the contrary, **it is the** ethical problem **that compels us to challenge all its multiple forms.**

The concept of violence is not taken lightly here. Violence **remains** poorly understood if it is accounted for simply in terms of **how and what it violates**, **the scale of its destructiveness**, or **any other element** of its annihilative power. **Intellectual violence is no exception** as its qualities point to a deadly and destructive conceptual terrain. Like all violence there are two sides to this relation. There is the annihilative power of nihilistic thought that seeks, through strategies of domination and practices of terminal exclusion, **to** close down the political **as a site for differences**. Such violence often appeals to the authority of a peaceful settlement, though it does so in a way that imposes a distinct moral image of thought **which already maps out what is reasonable to** think**,** speak**, and** act. Since the means and ends are already set out in advance, **the discursive frame is** never brought into critical question. And there is an affirmative counter that directly challenges authoritarian violence. Such affirmation **refuses to accept the parameters of the rehearsed orthodoxy**. **It** brings into question **that which is** not ordinarily questioned **in any given state of political affairs**. Foregrounding the life of the subject as key to understanding political deliberation, **it eschews intellectual dogmatism with a commitment to the open possibilities in thought.**

Hannah Arendt then was only partly correct when she famously contrasted violence with power. We may quite rightly accept her claim that people often resort to violence when power fails them. This is just as true for leaders of tyrannical States which are frequently shown to be powerless and impotent all the while they violently crush popular protest, as it is for those on the margins of existence who feel that all forms of empowerment have been denied and willfully suppressed. And yet as Michel Foucault would have argued, power without conflict is a misnomer for **without the capacity to resist there is no potential to create the world anew**. Not only are conflict and violence strategically different as it is possible to have the former in a way that challenges the latter. What is violence if it is not the attempt to **destroy something that** refuses to conform **to the oppressive model/standard?**

So rather than countering violence with a “purer violence” (discursive or otherwise) **there is a need, especially in the contemporary moment,** **to maintain** the language of critical pedagogy. That is a language that is necessarily conflictual and yet collaborative by definition. By criticality we may then insist here upon forms of thought **which do not have** war **or** violence **as its object.** If there is destruction, this is only apparent when the affirmative is denied. And by criticality we may also insist here upon forms of thought that **do not offer their intellectual soul to** the seductions of militarized power **and** the poverty of its political visions. Too often we find that while the critical gestures towards profane illumination; it is really the beginning of a violence that **amounts to a** death sentence **for critical thought.**

Perhaps **the most difficult task faced today** **is to avoid the false promises of violence** **and** demand a politics **that is** dignified **and** open **to the possibility of non-violent ways of living.** This demands new ways of thinking about and interrogating violence such that the value of critical thought becomes central to any mediation on global citizenry. As we all increasingly find ourselves in a position where the radical and the fundamental have been merged to denial of anything that may challenge the violent effects of contemporary regimes of control, the inevitable assault upon the university and all intellectual spheres **continues with** unrelenting force. **This is** not incidental **to the violence of our times.** It is one of its more pernicious manifestations. Our response, as the authors in this inaugural edition make clear, must be to counter this violence **with a commitment to the value of** criticality **and** public education. Hopefully “On Violence” will provide a modest counter to those who insist that violence may be reasoned for the greater good. Without this hope that **the world may be** transformed non-violently for the better**, the fight for dignity is** already lost**.**

#### The alternative raises a question that comes prior to aff impacts or solvency—voting negative injects epistemic doubt about militarism into our decision calculus which is the prerequisite to shifting away from violence as the solution

**Neu 13**—University of Brighton [the word “livers” has been replaced with “lives”… how do typos like that get through?]

(Michael, “The tragedy of justified war”, International Relations 27(4) 461–480, dml)

Just war theory is **not concerned with millions of starving people** who could be saved from death and disease **with** a fraction **of the astronomical amount of money** that, every year, goes into the US defence budget alone (a budget that could no longer be justified if the United States ran out of enemies one day). It is not interested in exposing **the operating mechanisms** of a global economic structure that is suppressive and exploitative and may be conducive to outbreaks of precisely the kind of violence that their theory is concerned with. As intellectually impressive as analytical just war accounts are, they do not convey **any critical sense of Western moralism**. It is as though just war theory **were written for** a different world **than the one we occupy**: **a world of** morally responsible**,** structurally unconstrained**,** roughly equal **agents**, who have non-complex and non-exploitative relationships, relationships that lend themselves **to** easy epistemic access **and** binary moral analysis. Theorists write with a degree of confidence **that** fails to appreciate **the** moral **and** epistemic fragility **of justified war, the long-term genesis of violent conflict, structural causes of violence** and the moralistic attitudes that politicians and the media are capable of adopting.

To insist that, in the final analysis, the injustice of wars is completely absorbed by their being justified **reflects a way of doing moral philosophy** **that is** frighteningly mechanical **and** sterile. It does not do justice to individual persons,59 it is nonchalant about suffering of unimaginable proportions and it **suffocates a nuanced moral world in a** rigid binary structure **designed to deliver** unambiguous**,** action-guiding **recommendations**. According to the tragic conception defended here, justified warfare constitutes a moral evil, not just a physical one – whatever Coates’ aforementioned distinction is supposed to amount to. If we do not recognise the moral evil of justified warfare, we run the risk of speaking the following kind of language when talking to a tortured mother, who has witnessed her child being bombed into pieces, justifiably let us assume, in the course of a ‘just war’:

See, we did not bomb your toddler into pieces intentionally. You should also consider that our war was justified and that, in performing this particular act of war, we **pursued a valid moral goal** of destroying the enemy’s ammunition factory. And be aware that killing your toddler was not instrumental to that pursuit. As you can see, there was nothing wrong with what we did. (OR: As you can see, we only infringed the right of your non-liable child not to be targeted, but we did not violate it.) Needless to say, we regret your loss.

This would be a deeply pathological thing to say, but it is precisely what at least some contemporary just war theorists would seem to advise. The monstrosity of some accounts of contemporary just war theory seems to derive from a combination of the degree of certainty with which moral judgements are offered and the ability to regard the moral case as closed once the judgements have been made.

One implication of my argument for **just theorists** is clear enough: they **should** critically reflect **on the one-dimensionality of their dominant agenda of making binary moral judgements about war**. If they did, **they would become** more sympathetic to the pacifist argument, not to the conclusion drawn by pacifists who are also caught in a binary mode of thinking (i.e. never wage war, regardless of the circumstances!) **but to the** timeless wisdom **that forms the essence of the pacifist argument.** It is wrong to knowingly kill and maim people, and it does not matter, at least not as much as the adherents of double effect claim, whether the killing is done intentionally or ‘merely’ with foresight. The difference would be psychological, too. Moral philosophers of war would no longer be forced to concede this moral truth; rather, they would be free to embrace it. There is no reason for them to disrespect the essence of pacifism. The just war theorist Larry May implicitly offers precisely such a tragic vision in his sympathetic discussion of ‘Grotius and Contingent Pacifism’. According to May, ‘war can sometimes be justified on the same grounds on which certain forms of pacifism are themselves grounded’.60

If this is correct, **just war theorists have good reason to stop calling themselves by their name**. **They would no longer be just war theorists, but** unjust war theorists, confronting politicians with ajus contra bellum**,** rather than offering them a jus ad bellum. Beyond being that, they would be much ‘humbler in [their] approach to considering the justness of war’ (or, rather, the justifiability), acknowledging that:

notions of legitimate violence **which appear so vivid and complete** to the thinking individual **are only** moments **and** snapshots **of a wider history** concerning the different ways in which humans have **ordered their arguments and practices of legitimate violence**. Humility in this context does not mean weakness. It involves a concern with the implicit danger of adopting an arrogant approach to the problem of war.61

Binary thinking in just war theory **is indeed arrogant**, as is the failure to acknowledge the legitimacy of – **and need for** – ambiguity**,** agony **and** doubt **in moral thinking about war**. Humble philosophers of war, on the contrary, would acknowledge that any talk of justice is highly misleading in the context of war.62 It does not suffice here, in my view, to point out that ‘we’ have always understood what ‘they’ meant (assuming they meant what we think they meant). Fiction aside, there is no such thing as a just war. There is also no such thing as a morally justified war **that comes** without ambiguity **and moral remainders**.

Any language of justified warfare **must therefore be** carefully drafted **and** constantly questioned. It should demonstrate **an** inherent**,** acute **awareness of the fragility of moral thinking about war**, rather than an eagerness to construct unbreakable chains of reasoning. Being uncertain about, and agonised by, the justifiability of waging war does not put a moral philosopher to shame. **The uncertainty is not only moral,** it is also epistemic. Contemporary just war theorists proceed **as if certainty were the rule**, and uncertainty the exception. The world to which just war theory applies is **one of** radical **and** unavoidable **uncertainty though**, where politicians, voters and combatants do not always know who their enemies are; whether or not they really exist (and if so, why they exist and how they have come into existence); what weapons the enemies have (if any); whether or not, when, and how they are willing to employ them; why exactly the enemies are fought and what the consequences of fighting or not fighting them will be.

Philosophers of war should also become more sensitive to the problem of political moralism. The **just war language is dangerous**, particularly when spoken by eager, selfrighteous, over-confident moralists trying to make a case. It would be a pity if philosophers of war, despite having the smartest of brains and the best of intentions, effectively ended up delivering rhetorical ammunition to political moralists. To avoid being inadvertently complicit in that sense, they could give public lectures on the dangers of political moralism, that is, on thinking about war in terms of black and white, good and evil and them and us. They could warn us against Euro-centrism, missionary zeal and the emperors’ moralistic clothes. They **could also** investigate the historical genesis **and** structural conditionality **of large-scale aggressive behaviour in the global arena**, deconstructing how warriors who claim to be justified are potentially tied into histories and structures, asking them: Who are you to make that claim?

A philosopher determined to go beyond the narrow discursive parameters provided by the contemporary just war paradigm would surely embrace something like Marcus’ ‘second-order regulative principle’, which could indeed lead to ‘“better” policy’.63 If justified wars are unjust and if it is true that not all tragedies of war are authentic, then political agents **ought to prevent such tragedies from occurring**. This demanding principle, however, **may require a** more fundamental reflection **on how we ‘conduct our lives and arrange our institutions’** (Marcus) in this world. **It is not enough to** adopt a ‘wait and see’ policy, simply **waiting for potential aggressions to occur and making sure that we do not go to war** unless doing so is a ‘last resort’. Large-scale violence between human beings has causes that go beyond the individual moral failure of those who are potentially aggressing, and if it turns out that some of these causes can be removed ‘**through more careful decision-making’** (Lebow), then **this is what ought to be done** by those who otherwise deprive themselves, today, of the possibility of not wronging tomorrow.

#### It’s try or die—the aff is a perfection of the military cooption of academic spaces—the role of the judge should be to dismantle the militarization of knowledge production—individual action is critical and the impact is extinction

**BondGraham and Hell 3**—PhD Sociology UC Santa Barbara AND UC Fiat Pax Research Project Group

(Darwin and Emily, “THE MILITARIZATION OF AMERICA’S UNIVERSITIES”, <http://santacruz.indymedia.org/usermedia/application/5/ucsc_demil.pdf>, dml)

The militarization of knowledge is found **in its pure form in the university**. Militarized knowledge is a way of knowing the world and relationships between humans, characterized by an acceptance and promotion of violence and war. In militarized society we come to know the world and our fellow humans in terms of the hostile other. Other nations become enemies. Other peoples become dehumanized. The world becomes possess-able if we are strong enough, disposable if we so choose. **Militarized knowledge adopts a worldview of force** not understanding**, violence** not peace. Militarized society relies on knowledge to create technological solutions to our problems and conflicts. **This is** always **at the expense of humanistic knowledge** – the ways of knowing and relating to the world which find solutions in peace and organization, not violence and quantity.

Because **universities are** at the center **of knowledge creation** in our society, we find our institutions of higher learning **imbued with violence**. The militarization of universities leads to **a spiraling effect** further strengthening the forces of war.

Militarized universities produce: military technologies including – new weapons, warfare systems, ways of thought and organization distinct to the goals of coercion and force, and the permanent technological revolution of warfare itself. Universities in service of the warfare state also produce the human resources demanded by the militarized society. **Universities churn out the** politicians**,** technocrats**,** bureaucrats**, and** skilled workers demanded by the society which so **diligently** produces **and** executes **the means of destruction**. These graduates, having learned about the world, its society, and applied sciences **through the lens of warfare** go forth and recreate this calamity. The future politicians will lead the nation into future wars, and the future engineers will construct future combat systems, **while we all obey and simply "**do our jobs**." The system** further entrenches itself, war begets war, the institutions of knowledge produce destruction **at the expense of creation**.

The technologies meant to banish war as unimaginabley destructive, and obsolete **have only accomplished the former**. New technologies meant to make war more humane, and conductable have only accomplished the latter.

TechnoWar & How the University Makes War Possible

The greatest effect the militarization of universities has had is by **making war more conductable**. Modern America, being the “civilized” and “peaceful” society it is, will not conduct a war that extols to large a cost in innocent civilian lives, and the lives of US soldiers. The technological revolution in aerial bombardment, missile capabilities, and weapon accuracy since the Vietnam war was intended to address this very issue. By making weapons more accurate and deployable from a distance, the military and its partners in science hoped to remove the US soldier from combat equation, while making state violence humane and survivable. This **supposed injection of ethics into the arsenal of the United States was** lauded in the Gulf War, Afghan War, and now with unprecedented emphasis in the second war against Iraq. War becomes more automated, increasingly technology withdraws the soldier from the battlefield. The arsenal becomes deployable through computer interfaces, warfighters sit behind computer screens hundreds, even thousands of miles from where they wreak havoc. Soldiers who must still encounter the enemy face to face are made into superhumans with high tech body armor, night vision, network communications, advanced sensors, all intended to make the US soldier invulnerable.

Science in the service of warfare reinforces a political establishment more willing to use violence than diplomacy. US politicians become sure of their military’s capabilities to defeat the enemy, and to do so **in a manner that the American public can accept**. The population falls into a similar mindstate. The technological revolution to make war more effectively against the enemy leads us only to more war.

Does science, technology, and knowledge emanating from our universities produce an ethical and just form of warfare? **Can war be made humane through technological solutions?** Absolutely not – Historically we know this. New technology leveraged in war has had the **net effect of** more war **and** more killing. Most prominent are the examples of past weapons whose inventors claimed would make war impossible. The machine gun being the most famous case was said to have made warfare so destructive and technologically advanced that nations would no longer fight. World War I immediately ensued, and millions died. The technologies meant to banish war as unimaginabley destructive, and obsolete have only accomplished the former. New technologies meant to make war more humane, and conductable have only accomplished the latter.

**What is at Stake?**

The future, and everything. The university takes its namesake from this fact. In Latin, universum - "The whole of created or existing things regarded collectively." **The university is** the whole of human knowledge; the knowledge we have about our existence, past present and future. The university is the attempt of the scientific system of knowledge to understand the human condition, our place in the world, and the realm of possibility. The university is more: In its most worthy incarnation, the university makes room for, even thrives from nonscientific, non-rational forms of knowledge including the arts and humanities. It is inarguably the most powerful attempt humanity has made to understand and re-make the world.

With this fact in mind there are two conclusions to be drawn from the militarization of the university. First, it can be described as simply a matter of fact that knowledge creation and the university serve the military. Humans make war with one another, and that universities are involved in this effort is a truism. Humans will continue to make war, and so the inclusion of the university should be expected. **This answer is of no value**. It assumes **a set of universal permanent truths** (a nature) about the human condition with no possibility of disproving. Furthermore it offers no future for humanity other than annihilation, and it completely betrays the fundamental idealogical basis of the university which is progress through enlightenment.

In contrast, it can be said that **the militarization of universities is a problem** directly related **to the condition of a society**. How much and in what ways a society’s institutions of knowledge creation serve the forces of war is a measure of that society’s worth. A nation that demands the enlistment of its knowledge base in the production of war and the perpetuation of violence is a nation not worthy of life. The only alternatives left would be the dismantling of that nation, or **a** radical reform **of its institutions and a fight against the forces of war**. This publication is dedicated to nothing less than **the** complete **and** radical **reform of our society’s** institutions of knowledge creation, from universities in service of the warfare state, to universities in resistance, in peace, and **toward the creation of a meaningful future**.

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#### Even when the Courts do take action it is meaningless – even court decisions against the executive only serve to implicitly authorize further executive abuse

Scheppele **12** –Kim Lane Scheppele, Laurance S. Rockefeller Professor of Sociology and Public Affairs in the Woodrow Wilson School and University Center for Human Values; Director of the Program in Law and Public Affairs, Princeton University. THE NEW JUDICIAL DEFERENCE, 92 B.U.L. Rev. 89

In this Article, I will show that American courts have often approached the extreme policies of the anti-terrorism campaign by splitting the difference between the two sides - the government and suspected terrorists. One side typically got the ringing rhetoric (the suspected terrorists), and the other side got the facts on the ground (the government). In major decisions both designed to attract public attention and filled with inspiring language about the reach of the Constitution even in times of peril, the Supreme Court, along with some lower courts, has stood up to the government and laid down limits on anti-terror policy in a sequence of decisions about the detention and trial of suspected terrorists. But, at the same time, these decisions have provided few immediate remedies for those who have sought the courts' protection. As a result, suspected terrorists have repeatedly prevailed in their legal arguments, and yet even with these court victories, little changed in the situation that they went to court to challenge. The government continued to treat suspected terrorists almost as badly as it did before the suspected terrorists "won" their cases. And any change in terrorism suspects' conditions that did result from these victorious decisions was slow and often not directly attributable to the judicial victories they won.¶ Does this gap between suspected terrorists' legal gains and their unchanged fates exist because administration officials were flouting the decisions of the courts? The Bush Administration often responded with sound and fury and attempted to override the Supreme Court's decisions or to comply minimally with them when they had to. n6 But, as this Article will show, these decisions did not actually require the government to change its practices very quickly. The decisions usually required the government to change only its general practices in the medium term. Judges had a different framework for analyzing the petitioners' situation than the petitioners themselves did; judges generally couched their decisions in favor of the suspected terrorists as critiques of systems instead of as solutions for individuals. In doing so, however, courts allowed a disjuncture between rights and remedies for those who stood before them seeking a vindication of their claims. Suspected terrorists may have won [\*92] in these cases - and they prevailed overwhelmingly in their claims, especially at the Supreme Court - but courts looked metaphorically over the suspects' heads to address the policies that got these suspects into the situation where the Court found them. Whether those who brought the cases actually got to benefit from the judgments, either immediately or eventually, was another question.¶ Bad though the legal plight of suspected terrorists has been, one might well have expected it to be worse. Before 9/11, the dominant response of courts around the world during wars and other public emergencies was to engage in judicial deference. n7 Deference counseled courts to stay out of matters when governments argued that national security concerns were central. As a result, judges would generally indicate that they had no role to play once the bullets started flying or an emergency was declared. If individuals became collateral damage in wartime, there was generally no judicial recourse to address their harms while the war was going on. As the saying goes, inter arma silent leges: in war, the law is mute. After 9/11, however, and while the conflict occasioned by those attacks was still "hot," courts jumped right in, dealing governments one loss after another. n8 After 9/11, it appears that deference is dead.¶ [\*93] But, I will argue, deference is still alive and well. We are simply seeing a new sort of deference born out of the ashes of the familiar variety. While governments used to win national security cases by convincing the courts to decline any serious review of official conduct in wartime, now governments win first by losing these cases on principle and then by getting implicit permission to carry on the losing policy in concrete cases for a while longer, giving governments a victory in practice. n9 Suspected terrorists have received [\*94] from courts a vindication of the abstract principle that they have rights without also getting an order that the abusive practices that have directly affected them must be stopped immediately. Instead, governments are given time to change their policies while still holding suspected terrorists in legal limbo. As a result, despite winning their legal arguments, suspected terrorists lose the practical battle to change their daily lives.¶ Courts may appear to be bold in these cases because they tell governments to craft new policies to deal with terrorism. But because the new policies then have to be tested to see whether they meet the new criteria courts have laid down, the final approval may take years, during which time suspected terrorists may still be generally subjected to the treatment that courts have said was impermissible. Because judicial review of anti-terrorism policies itself drags out the time during which suspected terrorists may be detained, suspected terrorists win legal victories that take a very long time to result in change that they can discern. As a result, governments win the policy on the ground until court challenges have run their course and the courts make decisions that contribute to the time that the litigation takes. This is the new face of judicial deference.¶ This Article will explore why and how American courts have produced so many decisions in which suspected terrorists appear to win victories in national security cases. As we will see, many judges have handled the challenges that terrorism poses for law after 9/11 by giving firm support, at least in theory, to both separation of powers and constitutional rights. Judges have been very active in limiting what the government can do, requiring substantial adjustments of anti-terrorism policy and vindicating the claims of those who have been the targets. But the solutions that judges have crafted - often bold, ambitious, and brave solutions - nonetheless fail to address the plights of the specific individuals who brought the cases.¶ This new form of judicial deference has created a slow-motion brake on the race into a constitutional abyss. But these decisions **give the government leeway to tackle** urgent **threats without having to change course** right away with respect to the treatment of particular individuals. New deference, then, is a mixed bag. It creates the appearance of doing something - an appearance not entirely false in the long run - while doing far less in the present to bring counter-terrorism policy back under the constraint of constitutionalism.

**The president will circumvent the aff**

Gregory **McNeal 08**, Visiting Assistant Professor of Law, Pennsylvania State University Dickinson School of Law. The author previously served as an academic consultant to the former Chief Prosecutor, Department of Defense Office of Military Commissions, “ARTICLE: BEYOND GUANTANAMO, OBSTACLES AND OPTIONS,” August 08, 103 Nw. U. L. Rev. Colloquy 29

3. Executive Forum-Discretion--Any reform which allows for adjudication of guilt in different forums, each with differing procedural protections, raises **serious questions of legitimacy** and also incentivizes the Executive to use **"lesser" forms of justice**--**nonprosecution or prosecutions by military commission**. In this section, my focus is on the incentives which compel the Executive to not prosecute, or to prosecute in military commissions rather than Article III courts. Understanding the reason for these discretionary decisions will guide reformers pondering whether a new system will actually be used by the next President.¶ There are two primary concerns that executive actors face when selecting a forum: **protecting intelligence** and **ensuring trial outcomes**. Executive forum-discretion is a different form of prosecutorial discretion with a different balancing inquiry from the one engaged in by courts. Where prosecutorial discretion largely deals with the charges a defendant will face, executive forum-discretion impacts the procedural protections a defendant can expect at both the pretrial and trial phase. Where balancing by Courts largely focuses on ensuring a just outcome which protects rights, the balancing engaged in by executive actors has inwardly directed objectives [\*50] which value rights only to the degree they impact the Executive's self interest.¶Given the unique implications flowing from forum determinations, reformers can benefit from understanding why an executive actor chooses one trial forum over another. I contend that there are seven predictive factors that influence executive discretion; national security court reformers should be aware of at least the two most salient predictive factors: trial outcomes and protection of intelligence equities. n112 The Executive's balancing of factors yields outcomes with direct implications for fundamental notions of **due process** and **substantial justice**. Any proposed reform is incomplete without thoroughly addressing the factors that the Executive balances.

#### Restrained drone policy being implemented now – solves the worst parts of drone over-reliance

**Bellinger, 13** – John B., Adjunct Senior Fellow for International and National Security Law at CFR (“Obama's Mixed Counterterror Message,” 5/28/13, CFR, http://www.cfr.org/counterterrorism/obamas-mixed-counterterror-message/p30786 //Red)

The part of the speech that broke the most new ground was the announcement that President Obama had signed new Presidential Policy Guidance for use of force against terrorists. The guidance is classified but has been shared with Congress. In conjunction with the speech, the White House released a Fact Sheet that provides more detail on targeting standards. And the day before the speech, Attorney General Eric Holder sent a letter to Congress acknowledging the killing of Anwar al-Awlaki and three other Americans and specifying new legal standards for targeted killings. Together, these documents reflect laudable efforts by administration national security lawyers and counterterrorism officials to **achieve more transparency and clearer standards** for the use of drones, although these efforts have been overshadowed by the more political statements of the speech. **Substantively, the new standards appear to set a higher bar for the use of drones**, especially "outside areas of active hostilities." For example, the same standard would be applied for strikes against Americans and non-Americans, i.e., that the individual must pose a "continuing and imminent threat" of violence to U.S. persons. And the threat must be to U.S. persons, not U.S. allies or other U.S. interests. Moreover, **drone strikes will not be used where it would be feasible to capture the target**, and there must be a near certainty that a drone strike must not cause death or injury to non-civilians. Together, these public and stricter standards should address some of the concerns of both domestic and international critics of drone strikes. Indeed, some Republican members of Congress have criticized the Obama administration for placing too many restrictions on drone strikes. The standards will also help to close the Pandora's Box the Obama administration has opened by its heavy reliance on drones; the new standards **set a high bar** for other countries to meet if they want to cite U.S. standards as a precedent.

**Reduced detention powers causes a shift to increased drone use**

**Waxman, 11** – Matthew C., Adjunct Senior Fellow for Law and Foreign Policy at CFR (“9/11 Lessons: Terrorist Detention Policy,” CFR, 8/26/11, http://www.cfr.org/911-impact/911-lessons-terrorist-detention-policy/p25665 //Red)

The best approach lies between those views, and despite many differences in implementation and rhetoric, both the Obama administration--and the Bush administration preceding it--have headed haltingly in that direction. Criminal prosecution of terrorism suspects is often appropriate and neither signals weakness to nor legitimates terrorists, as some critics charge. But limited use of detention powers **beyond** those of **criminal law**, **and including detention based on the law of war, is also legally and strategically appropriate** for some leaders or operatives fighting for al-Qaeda abroad, especially when Congress provides a strong legislative basis and detentions are regulated with robust procedural protections and opportunities to rebut the government's allegations. An important lesson since the 9/11 attacks is that detention decisions and practices have legal, political, diplomatic, operational, and other **ripple effects across many aspects of counterterrorism policy**, and across U.S. foreign policy more broadly. Those concerned that the United States is too aggressive in its detention policy should beware that **constraining this tool adds pressure to rely on other tools**, **including lethal drone strikes** or proxy detention by other governments. Those concerned that the United States is not aggressive enough should beware that dogged resistance to criminal prosecution and failure to seriously address opponents' domestic and international legal concerns threatens the long-term stability of terrorist detention programs. It also undermines critically important counterterrorism partnerships with allies abroad, with whom legal disagreements can inhibit exchanges of information, prisoner transfers, and other cooperation.

#### Plan leads to increased reliance on drone strikes – that sets a global precedent

**Roberts, 13** – Dan, the Guardian's Washington Bureau chief, covering politics and US national affairs (“US Drone Strikes Being Used As Alternative to Guantánamo, Lawyer Says,” The Guardian, 5/2/13, http://www.informationclearinghouse.info/article34800.htm //Red)

The lawyer who first drew up White House policy on lethal drone strikes has accused the Obama administration of overusing them because of its **reluctance to capture prisoners that would otherwise have to be sent to Guantánamo** Bay. John Bellinger, who was responsible for drafting the legal framework for targeted drone killings while working for George W Bush after 9/11, said he believed their use had increased since because President Obama was unwilling to deal with the consequences of jailing suspected al-Qaida members. "This government has decided **that instead of detaining members** of al-Qaida [at Guantánamo] **they are going to kill them**," he told a conference at the Bipartisan Policy Center. Obama this week pledged to renew efforts to shut down the jail but has previously struggled to overcome congressional opposition, in part due to US disagreements over how to handle suspected terrorists and insurgents captured abroad. An estimated 4,700 people have now been killed by some 300 US drone attacks in four countries, and the question of the programme's status under international and domestic law remains highly controversial. Bellinger, a former legal adviser to the State Department and the National Security Council, insisted that the current administration was justified under international law in pursuing its targeted killing strategy in countries such as Pakistan and Yemen because the US remained at war. "We are about the only country in the world that thinks we are in a conflict with al-Qaida, but countries under attack are the ones that get to decide whether they are at war or not," he said. "**These drone strikes are causing us great damage in the world**, but on the other hand if you are the president and you do nothing to stop another 9/11 then you also have a problem." Nevertheless, the legal justification for drone strikes has become so stretched that critics fear it could now encourage other countries to claim they were acting within international law if they deployed similar technology. A senior lawyer now advising Barack Obama on the use of drone strikes conceded that the administration's definition of legality could even apply in the hypothetical case of an al-Qaida drone attack against military targets on US soil. Philip Zelikow, a member of the White House Intelligence Advisory Board, said the government was relying on two arguments to justify its drone policy under international law: that the US remained in a state of war with al-Qaida and its affiliates, or that those individuals targeted in countries such as Pakistan were planning imminent attacks against US interests. When asked by the Guardian whether such arguments would apply in reverse in the unlikely event that al-Qaida deployed drone technology against military targets in the US, Zelikow accepted they would. "Yes. But it would be an act of war, and they would suffer the consequences," he said during the debate at the Bipartisan Policy Center in Washington. Hina Shamsi, a director at the American Civil Liberties Union, warned that the issue of legal reciprocity was not just a hypothetical concern: "The use of this technology is spreading and we have to think about what we would say if other countries used drones for targeted killing programmes." "Few thing are more likely to undermine our legitimacy than the perception that we are not abiding by the rule of law or are indifferent to civilian casualties," she added. Zelikow, a former diplomat who also works as a professor of history at the University of Virginia, said he believed the US was in a stronger position when it focused on using drones only against those directly in the process of planning or carrying out attacks.

**Causes global conflict escalation**

**Cronin, 13** – Audrey Kurth, Professor of Public Policy at George Mason University (“Why Drones Fail,” Foreign Affairs, July/August 2013, http://www.foreignaffairs.com/articles/139454/audrey-kurth-cronin/why-drones-fail?page=show //Red)

Finally, the drone campaign presents a fundamental challenge to U.S. national security law, as evidenced by the controversial killing of four American citizens in attacks in Yemen and Pakistan. The president’s authority to protect the United States does not supersede an individual’s constitutional protections. All American citizens have a right to due process, and it is particularly worrisome that a secret review of evidence by the U.S. Department of Justice has been deemed adequate to the purpose. The president has gotten personally involved in putting together kill lists that can include Americans -- a situation that is not only legally dubious but also strategically unwise. PASS THE REMOTE The sometimes contradictory demands of the American people -- perfect security at home without burdensome military engagements abroad -- have fueled the technology-driven, tactical approach of drone warfare. But it is never wise to let either gadgets or fear determine strategy. There is nothing inherently wrong with replacing human pilots with remote-control operators or substituting highly selective aircraft for standoff missiles (which are launched from a great distance) and unguided bombs. Fewer innocent civilians may be killed as a result. The problem is that the guidelines for how Washington uses drones have fallen well behind the ease with which the United States relies on them, allowing short-term advantages to overshadow long-term risks. **Drone strikes must be legally justified, transparent, and rare.** Washington needs to better establish and follow a publicly explained legal and moral framework for the use of drones, making sure that they are part of a long-term political strategy that undermines the enemies of the United States. With the boundaries for drone strikes in Pakistan, Somalia, and Yemen still unclear, the United States risks encouraging competitors such as China, Iran, and Russia to label their own enemies as terrorists and go after them across borders. If that happens -- if counterterrorism by drone strikes ends up **leading to globally destabilizing interstate wars** -- then al Qaeda will be the least of the United States’ worries.

## 2NC

### nonviolence

#### This comes first—problematizing the normative structures that shape how bodies are targeted by war is critical to understanding how and why violence occurs in concretized scenarios

**Lloyd 6**—Loughborough University

(Moya, “Who counts? Understanding the relation between normative violence and the production of political bodies”, paper presented to the panel: ‘Power, Violence and the Body’ Annual Meeting of the American Political Science Association Philadelphia, 31 August – 3 rd September 2006, dml)

It might be objected, of course, that extending the idea of violence any further in order to incorporate normative violence within it results in a proliferation of meaning that merely hampers the usefulness of ‘violence’ as a descriptive and evaluative political concept. 27 And, this is not just because the very idea of a normative violence may itself appear paradoxical, if not downright contradictory given that normative is conventionally used to designate something that ought to happen. It is also because it is not perhaps transparently obvious that some of the actions Butler identifies as sustaining normative gender (in the examples given) qualify as recognizable acts of violence in the first place (e.g. losing lovers and jobs). Moreover, given that **so many die in wars**, as a consequence of acts of internecine conflict, terrorism, random killings, and so many are brutalized in civil wars, in racially-motivated or homophobic assaults, through rape or acts of domestic violence, as a result of torture, not to mention the violence of child abuse, some critics will no doubt claim that **time is better spent** finding solutions **to deal with these instances of actual violence** rather than speculating about forms of figurative or categorical violence and how they do or do not relate to **what happens in the ‘real world’.** But what if what we recognize as physical violence depends on certain categorizations **that are**, in themselves, **normatively violent**, that operate, in other words, to exclude certain subjects and/or acts of violence? **What if physical violence occurs** precisely because **some people are apprehended as less valuable than others?** And, here we have only to think of homophobic or racist violence. **What if we** cannot see **the violence that certain peoples suffer as violence at all because those people are invisible** (‘unreal’, in Butler’s lexicon) to us; that is, fail to figure within our consciousness as human and are thus denied the rights, privileges, protections and help that accrue to the human? **Should we still argue for an** exclusive focus **on** actual, empirical **violence?** Or would we be better **evaluating** how **and** why **certain persons are construed as somehow deserving of**, or soliciting, **violence in the first place?** It is my contention in this section that an analysis of normative violence is, in fact, something we cannot do without **since it not only sheds** valuable light **on the kinds of political violence that characterize the contemporary world** (including war, ethnic conflict, terrorism, racist violence to mention only some of the most obvious) but also because it forces us to consider how our ability to recognize certain actions as violent **might itself depend on the effacement of other (violent) actions**. To illustrate how this argument works, I now want to turn to Precarious Life.

#### You should refuse their intellectual blackmail—roleplaying is a trap—your role as an intellectual is to speak truth to power

**Foucault 88**—DHeidt’s crime-fighting alter-ego

(Michel, interview with Alessandro Fontana, *Politics, Philosophy, Culture: Interviews and Other Writings, 1977-1984* pg 51-52, dml)

FOUCAULT I believe too much in truth **not to suppose that there are different truths and different ways of speaking the truth**. Of course, **one** can't expect **the government to tell the truth**, the whole truth, and nothing but the truth. On the other hand, **we can demand of those who govern us** a certain truth **as to** their ultimate aims**,** the general choices of their tactics**, and** a number of particular points in their programs: this is the parrhesia (free speech) of the governed, **who** can **and** must **question those who govern them**, in the name of the knowledge, the experience they have, **by virtue of being citizens**, of what those who govern do, of the meaning of their action, of the decisions they have taken.

However, **one must** avoid a trap in which **those who govern try to catch intellectuals** and into which they often fall: "Put yourselves in our place and tell us what you would do." **It is** not **a question one has to answer**. To make a decision on some question **implies a knowledge of evidence that is refused us**, an analysis of the situation that we have not been able to make. This is a trap. Nevertheless, as governed, **we have a** perfect right **to ask questions about the truth**: "What are you doing, for example, when you are hostile to Euromissiles, or when, on the contrary, you support them, when you restructure the Lorraine steel industry, when you open up the question of private education."

#### Don’t need to win spillover—voting neg creates a personal dignity that is immanently ethical

**May 13**—professor at Clemson

(Todd, “THE DIGNITY OF NONVIOLENCE”, On Violence 1:1, 7-12, dml)

It is in this beyond that that **dignity of nonviolence lies**. Not content to tread the same paths that always lead to the same impasses—my retaliation against your retaliation against my retaliation against….—those who engage in nonviolent resistance assume that there must be something more to being human than this. Nonviolence, true nonviolence, is creative. **It seeks to** open up new paths **that may lead to** new **and** better **destinations**. At the very least, **it seeks to** open people’s eyes anew, so they can see something they had not seen before. And in doing so, it works **not only on the minds of those to whom it speaks, but** also upon the speakers**.**

Those who engaged in the lunch-counter sit-ins or rode the busses or filled the jail cells during the civil rights movement flamed the conscience of a nation. But they did more than that. They crafted their own ordinary lives **into** something extraordinary. They elevated the struggle for equality and **in the same gesture elevated themselves**. They crafted themselves into something they would otherwise not have been, and in doing so **brought us along part of the way with them**.

The Danes who, when the Nazis invaded, spirited their fellow Jews across the straight to Sweden so that most of the Danish Jewish population survived; **achieved a quiet grandeur that** magnified them **and** continues to inspire us**.**

We all know that we have had enough of violence. We have had enough of the dying and mutilation that is the legacy of our advanced societies’ military technology. We have had enough of the anger that, in places like Rwanda, issued out in the form of machetes and hatchets. And, as the recent Occupation movement has shown, many of us have had enough of the social and economic conditions that are a more insidious, but not less effective, violence against so many. But **we must go beyond “Basta!”** We must think at once about **what must be resisted and how**, as is often said, **we can** be the change **that is resistance**. To do so is to pass to the other side of violence. **It is not to glimpse a non-violence ready-made but** instead to inaugurate it, to create something that was not there before. **It is to** envision **and to** improvise **another context and other selves**.

Michel Foucault once said that his writings were animated by the question of who else we might be. We have been given to ourselves as beings of violence. In most places and in most times, that is how we have been given to ourselves. **To** think **and** act **nonviolently is precisely** to ask the question ofwho else we might be. Not just what we might undergo or what we might suffer. But what, beyond the selves we have been told to be, **we might create of our lives**. **That is at once** our dignity **and** our task**.**

#### While the aff addresses the legal status of detainees, it fails to question the structures of legalism that enable detention in the first place—the aff relies on a parochial frame for understanding subjecthood that positions certain bodies as legitimate targets of violence

**Butler 4**—not Judy

(Judith, *Precarious Life* pg 86-92, dml)

So, these prisoners, who are not prisoners, will be tried, if they will be tried, according to rules that are not those of a constitutionally defined US law nor of any recognizable international code. Under the Geneva Convention, the prisoners would be entitled to trials under the same procedures as US soldiers, through court martial or civilian courts, and not through military tribunals as the Bush administration has proposed. The current regulations for military tribunals provide for the death penalty if all members of the tribunal agree to it. The President, however, will be able to decide on that punishment unilaterally in the course of the final stage of deliberations in which an executive judgment is made and closes the case. Is there a timeframe set forth in which this particular judicial operation will cease to be? In response to a reporter who asked whether the government was not creating procedures that would be in place indefinitely, "as an ongoing additional judicial system created by the executive branch," General Counsel Haynes pointed out that the "the rules [for the tribunals] ... do not have a sunset provision in them ... I'd only observe that the war, we think, will last for a while." One might conclude with a strong argument that government policy ought to follow established law. And in a way, that is part of what I am calling for. But there is also a problem with the law, since it leaves open the possibility of its own retraction, and, in the case of the Geneva Convention, extends "universal" rights only to those imprisoned combatants who belong to "recognizable" nation-states, but not to all people. Recognizable nation-states are those that are already signatories to the convention itself. This means that stateless peoples or those who belong to states that are emergent or "rogue" or generally unrecognized lack all protections. The Geneva Convention is, in part, a civilizational discourse, and it nowhere asserts an entitlement to protection against degradation and violence and rights to a fair trial as universal rights. Other international covenants surely do, and many human rights organizations have argued that the Geneva Convention can and ought to be read to apply universally. The International Committee of the Red Cross made this point publicly (February 8, 2002). Kenneth Roth, Director of Human Rights Watch, has argued strongly that such rights do pertain to the Guantanamo Prisoners (January 28, 2002), and the Amnesty International Memorandum to the US Government (April 15, 2002), makes clear that fifty years of international law has built up the assumption of universality, codified clearly in Article 9(4) of the International Covenant on Civil and Political Rights, ratified by the US in 1992. Similar statements have been made by the International Commission on Jurists (February 7, 2002) and the Organization for American States human rights panel made the same claim (March 13, 2002), seconded by the Center for Constitutional Rights (June ro, 2002). Exclusive recourse to the Geneva Convention, itself drafted in 1949, as the document for guidance in this area is thus in itself problematic. The notion of "universality" embedded in that document is restrictive in its reach: it counts as subjects worthy of protection only those who belong already to nation-states recognizable within its terms. In this way, then, the Geneva Convention is in the business of establishing and applying a selective criterion to the question of who merits protection under its provisions, and who does not. The Geneva Convention assumes that certain prisoners may not be protected by its statute. By clearly privileging those prisoners from wars between recognizable states, it leaves the stateless unprotected, and it leaves those from nonrecognized polities without recourse to its entitlements. Indeed, to the extent that the Geneva Convention gives grounds for a distinction between legal and illegal combatants, it distinguishes between legitimate and illegitimate violence. Legitimate violence is waged by recognizable states or "countries," as Rumsfeld puts it, and illegitimate violence is precisely that which is committed by those who are landless, stateless, or whose states are deemed not worth recognizing by those who are already recognized. In the present climate, we see the intensification of this formulation as various forms of political violence are called "terrorism," not because there are valences of violence that might be distinguished from one another, but as a way of characterizing violence waged by, or in the name of, authorities deemed illegitimate by established states. As a result, we have the sweeping dismissal of the Palestinian Intifada as "terrorism" by Ariel Sharon, whose use of state violence to destroy homes and lives is surely extreme. The use of the term, "terrorism," thus works to delegitimate certain forms of violence committed by non-state-centered political entities at the same time that it sanctions a violent response by established states. Obviously, this has been a tactic for a long time as colonial states have sought to manage and contain the Palestinians and the Irish Catholics, and it was also a case made against the African National Congress in apartheid South Africa. The new form that this kind of argument is taking, and the naturalized status it assumes, however, will only intensify the enormously damaging consequences for the struggle for Palestinian self-determination. Israel takes advantage of this formulation by holding itself accountable to no law at the very same time that it understands itself as engaged in legitimate self-defense by virtue of the status of its actions as state violence. In this sense, the framework for conceptualizing global violence is such that "terrorism" becomes the name to describe the violence of the illegitimate, whereas legal war becomes the prerogative of those who can assume international recognition as legitimate states. The fact that these prisoners are seen as pure vessels of violence, as Rumsfeld claimed, suggests that they do not become violent for the same kinds of reason that other politicized beings do, that their violence is somehow constitutive, groundless, and infinite, if not innate. If this violence is terrorism rather than violence, it is conceived as an action with no political goal, or cannot be read politically. It emerges, as they say, from fanatics, extremists, who do not espouse a point of view, but rather exist outside of "reason," and do not have a part in the human community. That it is Islamic extremism or terrorism simply means that the dehumanization that Orientalism already performs is heightened to an extreme, so that the uniqueness and exceptionalism of this kind of war makes it exempt from the presumptions and protections of universality and civilization. When the very human status of those who are imprisoned is called into question, it is a sign that we have made use of a certain parochial frame for understanding the human, and failed to expand our conception of human rights to include those whose values may well test the limits of our own. The figure of Islamic extremism is a very reductive one at this point in time, betraying an extreme ignorance about the various social and political forms that Islam takes, the tensions, for instance, between Sunni and Shiite Muslims, as well as the wide range of religious practices that have few, if any, political implications such as the da'wa practices of the mosque movement, or whose political implications are pacifist. If we assume that everyone who is human goes to war like us, and that this is part of what makes them recognizably human, or that the violence we commit is violence that falls within the realm of the recognizably human, but the violence that others commit is unrecognizable as human activity, then we make use of a limited and limiting cultural frame to understand what it is to be human. This is no reason to dismiss the term "human," but only a reason to ask how it works, what it forecloses, and what it sometimes opens up. To be human implies many things, one of which is that we are the kinds of beings who must live in a world where clashes of value do and will occur, and that these clashes are a sign of what a human community is. How we handle those conflicts will also be a sign of our humanness, one that is, importantly, in the making. Whether or not we continue to enforce a universal conception of human rights at moments of outrage and incomprehension, precisely when we think that others have taken themselves out of the human community as we know it, is a test of our very humanity. We make a mistake, therefore, if we take a single definition of the human, or a single model of rationality, to be the defining feature of the human, and then extrapolate from that established understanding of the human to all of its various cultural forms. That direction will lead us to wonder whether some humans who do not exemplify reason and violence in the way defined by our definition are still human, or whether they are "exceptional" (Haynes) or "unique" (Hastert), or "really bad people" (Cheney) presenting us with a limit case of the human, one in relation to which we have so far failed. To come up against what functions, for some, as a limit case of the human is a challenge to rethink the human. And the task to rethink the human is part of the democratic trajectory of an evolving human rights jurisprudence. It should not be surprising to find that there are racial and ethnic frames by which the recognizably human is currently constituted. One critical operation of any democratic culture is to contest these frames, to allow a set of dissonant and overlapping frames to come into view, to take up the challenges of cultural translation, especially those that emerge when we find ourselves living in proximity with those whose beliefs and values challenge our own at very fundamental levels. More crucially, it is not that "we" have a common idea of what is human, for Americans are constituted by many traditions, including Islam in various forms, so any radically democratic self-understanding will have to come to terms with the heterogeneity of human values. This is not a relativism that undermines universal claims; it is the condition by which a concrete and expansive conception of the human will be articulated, the way in which parochial and implicitly racially and religiously bound conceptions of human will be made to yield to a wider conception of how we consider who we are as a global community. We do not yet understand all these ways, and in this sense human rights law has yet to understand the full meaning of the human. It is, we might say, an ongoing task of human rights to reconceive the human when it finds that its putative universality does not have universal reach. The question of who will be treated humanely presupposes that we have first settled the question of who does and does not count as a human. And this is where the debate about Western civilization and Islam is not merely or only an academic debate, a misbegotten pursuit of Orientalism by the likes of Bernard Lewis and Samuel Huntington who regularly produce monolithic accounts of the "East," contrasting the values of Islam with the values of Western "civilization." In this sense, "civilization" is a term that works against an expansive conception of the human, one that has no place in an internationalism that takes the universality of rights seriously. The term and the practice of "civilization" work to produce the human differentially by offering a culturally limited norm for what the human is supposed to be. It is not just that some humans are treated as humans, and others are dehumanized; it is rather that dehumanization becomes the condition for the production of the human to the extent that a "Western" civilization defines itself over and against a population understood as, by definition, illegitimate, if not dubiously human. A spurious notion of civilization provides the measure by which the human is defined at the same time that a field of would-be humans, the spectrally human, the deconstituted, are maintained and detained, made to live and die within that extra-human and extrajuridical sphere of life. It is not just the inhumane treatment of the Guantanamo prisoners that attests to this field of beings apprehended, politically, as unworthy of basic human entitlements. It is also found in some of the legal frameworks through which we might seek accountability for such inhuman treatment, such that the brutality is continued-revised and displaced-in, for instance, the extra-legal procedural antidote to the crime. We see the operation of a capricious proceduralism outside of law, and the production of the prison as a site for the intensification of managerial tactics untethered to law, and bearing no relation to trial, to punishment, or to the rights of prisoners. We see, in fact, an effort to produce a secondary judicial system and a sphere of non-legal detention that effectively produces the prison itself as an extra-legal sphere maintained by the extrajudicial power of the state. This new configuration of power requires a new theoretical framework or, at least, a revision of the models for thinking power that we already have at our disposal. The fact of extra-legal power is not new, but the mechanism by which it achieves its goals under present circumstances is singular. Indeed, it may be that this singularity consists in the way the "present circumstance" is transformed into a reality indefinitely extended into the future, controlling not only the lives of prisoners and the fate of constitutional and international law, but also the very ways in which the future may or may not be thought.

#### CIRCUMVENTION!

**Glennon 14**—Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University [Trumanites=“the network of several hundred high-level military, intelligence, diplomatic, and law enforcement officials within the Executive Branch who are responsible for national security policymaking”]

 (Michael, “National Security and Double Government”, Harvard National Security Journal / Vol. 5, pg 1-114, dml)

The first set of potential remedies aspires to tone up Madisonian muscles one by one **with ad hoc** legislative **and** judicial **reforms**, by, say, narrowing the scope of the state secrets privilege; permitting the recipients of national security letters at least to make their receipt public; broadening standing requirements; improving **congressional oversight of** covert operations, including drone killings **and** cyber operations; **or strengthening** statutory constraints **like** FISA545 and **the War Powers Resolution**.546 Law reviews brim with such proposals. But **their stopgap approach has been tried repeatedly** since the Trumanite network’s emergence. Its futility is now glaring. Why such efforts would be any more fruitful in the future **is hard to understand**. The Trumanites **are committed to the rule of** **law** and their sincerity is not in doubt, but the rule of law to which they are committed **is** largely devoid **of meaningful constraints**.547 Continued focus on legalist band-aids merely buttresses the illusion that the Madisonian **institutions are alive and well**—and with that illusion, **an entire narrative** **premised on the assumption that it is merely a matter of** identifying a solution **and** looking to the Madisonian institutions to effect it. That frame deflects attention from the underlying malady. What is needed, if Bagehot’s theory is correct, is **a fundamental change in** the very discourse **within which U.S. national security policy is made**. For **the question is no longer**: What should the government do? The questions now are: What should be done about the government? What can be done about the government? **What are the responsibilities** not of the government **but** of the people?

#### The impact outweighs—the bureaucracy is empirically responsible for disastrous authoritarianism

**Glennon 14**—Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University [Trumanites=“the network of several hundred high-level military, intelligence, diplomatic, and law enforcement officials within the Executive Branch who are responsible for national security policymaking”]

 (Michael, “National Security and Double Government”, Harvard National Security Journal / Vol. 5, pg 1-114, dml)

Bagehot anticipated these risks. Bureaucracy, he wrote, is “the most unimproving and shallow form of government,”612 and the executive that commands it “the most dangerous.”613 “If it is left to itself,” he observed, “without a mixture of special and non-special minds,” decisional authority “will become technical, self-absorbed, self-multiplying.”614 The net result is responsibility that is neither fixed nor ascertainable but diffused and hidden,615 with implications that are beyond historical dispute. “The most disastrous decisions in the twentieth century,” in Robert Dahl’s words, “turned out to be those made by authoritarian leaders freed from democratic restraints.”616

## 1NR

### anthro

#### Absent an orientation away from exceptional politics, indefinite detention remains inevitable

Tagma 09. Halit Mustafa Tagma, Professor of Political Science and International Relations, Sabanci University, Alternatives: Global, Local, Political, Vol. 34, No. 4 (Oct.-Dec. 2009), pg. 422

The right of sovereignty was the right to take life or let live. And then this new right is established: the right to "make" live and to "let" die.76 Excluded bodies, for Agamben, are made possible by sovereign power that produces bare life. For Foucault, sovereign power is asso- ciated with the taking of life, whereas biopower is associated with the reproduction of life. This puts Foucault in a difficult spot as the power to kill and make live in the age of modernity has seen its extremes: If the power of sovereignty is increasingly on the retreat and disci- plinary power is on the advance, how is it possible to kill? How can murder function in this technology of power, which takes life as both its object and its objective? Given that this power's objective is essentially to make live, how can it let die? How can the power of death, the function of death, be exercised in a political system cen- tered upon bio-power?77 Foucault' s response is that racism is the "precondition to the ex- ercise of such a power: the right to kill."78 State racism is introduced in order to separate livable life from life that can be killed. Wars of the early twentieth century have employed such reasoning, where a statist discourse externalizes and racializes the danger to society that ought to be defeated for the sake of the community. Foucault, in Society Must be Defended, had in mind the biological variant of racist discourse that was portrayed in Nazi Germany and Fascist Italy. However, the theme is alive and well in today's racism, which can be loosely labeled here as "cultural" racism.79 Cultural racism understood in this sense is articu- lated today through a discourse of "civilizations": "our values," "our mode of living," and "proper" human governance. Cultural racism ex- hibits itself in Samuel Huntington 's binary framing of a civilized world (the West) facing an uncivilized world. Orientalist discourse fostered European imperialism in eighteenth- and nineteenth-century Europe through the representation of Middle Eastern peoples as an inferior race. Similarly today, the contemporary representations of Iraqis and Afghanis as threatening subjects, unable to govern themselves, help le- gitimize external military interventions in those societies.80 In launch- ing a war against internal and external threats, one therefore not only betters the "inferior people's lives" but also ensures "the regeneration of one's race" through heroic rituals and nationalist ceremonies that parade the good Western nation and its values.81 None of this is a recent invention. As Timothy Mitchell has ar- gued, the European colonization of Egypt rested on the ability to pro- duce not just a neatly organized society modeled after the military barracks, but the ability of the European to imagine and disseminate a form of representation and identity that was colonizing by nature.82 The articulation of the Egyptian as the racially and culturally inferior other to the Western rational scientific man through an Orientalist discourse, both in Europe and Egypt, was at the core of Egyptian col- onization. The Orient was thought to lack technological and military superiority and was seen as a culture that lacked the ability to produce a rational, orderly society. The imperial encounter with Europe's other was not just to keep the "natives in their huts," but also to "win their hearts and minds." A French military officer after suppressing a rebellion in 1845-1846 in Egypt said: "When we have them in our hands, we will then be able to do many things which are quite im- possible for us today and which will perhaps allow us to capture their minds after we have captured their bodies."83 This logic echoes re- cent news when a US commander in Iraq who works with social sci- entists says, "We're looking at this from a human perspective, from a social scientist's perspective. We're not focused on the enemy. We're focused on bringing governance down to the people."84 The regime of truth of a given society, and the marks of differ- ence on a subject's body, has long informed sovereign power about what forms of life are to be excluded. The US Army's recruitment of social scientists in Afghanistan and Iraq under a program titled "Human Terrain System" (HTS) exemplifies the way in which localized sovereign decisions are informed by a scientific discourse. Under this program, teams of social scientists, most notably anthropologists, are embedded in combat brigades to help the commanders make better decisions with respect to the population in which they are operat- ing.85 The following statement of the overseer of this program serves as an excellent example of the relation between the production of knowledge in the human sciences and its utilization by a bureaucratic apparatus: "Cultural anthropologists are focused on understanding how societies make decisions and how attitudes are formed. They give us the best vision to see the problems through the eyes of the target population."86 David Price's comment on this relation serves my point on this power/knowledge nexus: In observing that "cultural understanding is an endless endeavor that must be overcome leveraging whatever assets are available," the military's choice of "leveraging" beautifully clarifies how the mili- tary conceptualizes anthropologists and others providing occupying troops in Iraq with cultural information: they are seen as priers of knowledge; tools to be used for the extraction and use of knowledge "assets" in ways that military commanders see fit.87 As Mitchell points out, the use of the scientific gaze to discipline, classify, and control the local population goes back to the colonial pe- riod. Today we see the use of scientific discourse in the the US Army's Professional Writing Collection. In an article detailing the HTS, the ad- ministrators of the system draw from the lessons of the French and British experience in colonizing the local population: "Conclusions logically demand that past experience guide our understanding of how best to meet, in a manner that supports our own military objec- tives, the expectations and desires of the people at the heart of such struggles."88 What this means is that the colonial lessons of the past are used today to bring "governance down to the population." Besides the manual Standard Operating Procedures that dictates the minute-to-minute details on disciplining prisoners and Human Ter- rain Systems to classify and discipline populations, there is also a mushrooming psychiatric discipline that has the prisoners as its ob- ject. Allison Howell argues that the psychiatric discourse, as a regime of truth, has pathologized the Guantánamo prisoners such that it "play[ed] a part in the conditions of possibility for indefinite deten- tion."89 Howell shows how the scientific discourse on the mental health of the prisoners has constructed them as "crazy, fanatical mad- men" who are dangerous to themselves and society.90 She argues that this regime of truth has legitimated the indefinite detention of the prisoners. This supports my central argument that the "regime of truth" of biopower supplements sovereign power. This means that tactics of power create the conditions of possibility for the justifica- tion of exceptional sovereign practices. In other words, techniques of power that attempt to individualize, divide, and discipline bodies feed back into and justify the conditions of possibility for the exceptional logic in the articulation of emergency powers - a logic of supplemen- tarity par excellence. All this is not to say that there is a simple chronol- ogy to this logic, and that such affairs occur in abstraction, external to chance, contingency, historicity, interpretation, and the regime of truth of a given society. Instead, the techniques of power go hand in hand with the regime of truth in a given space and time. Exclusion- ary practices and the production of bare life do not operate, as Agam- ben would have us believe, in a uniform and universal manner that gets replicated across time and space, be it in the Greek city-state Nazi Germany. Agamben declares that thanks to sovereign power Ve are all Homo Sacer" Historically and theoretically, however, the articu- lation of the Ve" is at the core of the problem. The prisoners of the war on terror are also subject to standards of classification, categorization, and profiling. In the case of John Phillip Walker Lindh, the son of a white suburban US family, who was captured in the opening of the war in Afghanistan, "justice" was meted out swiftly, and he was given a twenty-year sentence. On the other hand, Jose Padilla, "an American citizen of color," and in the case of thousands of other subjects put on indefinite detention, nor- mal law is put on hold.91 What accounts for this difference are the marks of difference on a subject's body (race, religion, national back- ground, and ideology) that all come in to play at the ground level when petty bureaucrats get to decide who is to be treated according to what standard of operation. The workings of racism can be identi- fied in the speeches of petty bureaucrats at the local level, as in this statement from one of the Tipton Three: I recall that one of them said "you killed my family in the towers and now it's time to get you back." They kept calling us mother fuckers and I think over the three or four hours that I was sitting there, I must have been punched, kicked, slapped or struck with a rifle butt at least 30 or 40 times. It came to a point that I was simply too numb from the cold and from exhaustion to respond to the pain.92 Although the Three were British citizens and had nothing to do with the 9/11 terrorist attacks, they were quickly associated with ter- rorism because of their racial background and apprehension in Af- ghanistan. Despite the fact that they had nothing to do with terrorism, as their release from Guantánamo Bay suggests, their treatment sands as an indication not of senseless sovereign vengeance but of a vengeance informed by a certain racist bias. Their capture, torture, and treatment was all made possible by a prior initial racial profiling that resulted in innocent men being held in captivity. Sovereign vio- lence does not operate in the absence of a regime of truth that iden- tifies those whose bodies could be subjected to violence. As developed in particular, there was an unmistakable racist disposition toward the "different" bodies of the prisoners. As Reid-Henry points out, the flesh of the Oriental, both as an exotic and an inferior sub- ject, probably had something to do with the stripping and beating of Middle Eastern prisoners.93 It may be argued that the decision not to apply the Geneva Con- vention and other standards of legal treatment to the prisoners cap- tured in Afghanistan is representative of an exceptional decision. However, in line with what I have been arguing, such a resolution is not a simple act of deciding on the part of the leading politicomili-tary cadres of a state. This is not to deny the importance of subjects in key positions; however, such decisions do not take place in a space external to interpretation, culture, and history. Furthermore, much of the sovereign decisions, such as "who is to be detained indefi- nitely," are made at the local level based on interpretation of petty bureaucrats. Sovereign decisions are always already informed by historical and cultural understandings as to who counts as a member of the "good species." The "good species," "the inside," and the body politic have been constructed by colonial discourse. As Roxanne Doty has pointed out, colonial discourse has had a vital role in the construction of Western nations. She further points out that race, religion, and other marks of difference have played an important role in national classi- fication.94 The treatment of faraway people as inferior and exotic has played an important role in nation building in its classic sense. There- fore, who counts as a citizen, a "legitimate" member of a "legitimate" nation, is the product and effect of centuries of interaction of the West with its others. Understood in this sense, sovereign decisions (whether made at the top or bottom level) are informed and shaped by a cultural and colonial history. This is neglected in Agamben's grand analysis of Western politics. Therefore, sovereign power needs the classification, hierarchization, and othering provided by a regime of truth in order to conduct its violent power. Only certain types of peo- ple could be rendered as bare life and thrown into a zone of indis- tinction. Understood this way, it is easier to comprehend the "smooth" production of homines sacri out of Middle Eastern subjects.

#### And any form of anthropocentric hierarchy is flawed and ensures biopolitical violence – rejecting this binary is key

**Calarco 8** – Ph.D, SUNY Binghamton, Associate Professor of Philosophy at Fullerton University (Matthew, “Zoographies: The Question of the Animal from Heidegger to Derrida” p.94-95)

As Agamebn suggests, the structure or machine that delimits the contours of the human is perfectly ironic and empty. It does not function by uncovering a uniquely human trait that demarcates a clean break between human and all other nonhuman animals – for, as Agamben himself acknowledges, no such trait or group of traits is to be found. This much we know from current debates in evolutionary biology and animal ethics. And here it is not so much a matter of subscribing to a watered-down, quasi-Darwinian continuism that would blur any and all distinctions one might wish to make between and among human and nonhuman animals but rather recognizing that deciding what constitutes “the human” and “the animal” is never simply a neutral scientific or ontological matter. Indeed, one of the chief merits of *The Open* is that it helps us to see that the locus and stakes of the human-animal distinction are almost always deeply *political and ethical*. For not only does the distinction create the opening for the exploitation of nonhuman animals and others considered not fully human (this is the point that is forcefully made by animal ethicists), but it also creates the conditions for contemporary biopolitics, in which more and more of the “biological” and “animal” aspects of human life are brought under the purview of the State and the juridical order.

As Agamben has argued in *Homo Sacer* and elsewhere, contemporary biopolitics, whether it manifests itself in totalitarian or democratic form, contains within it the virtual possibility of concentration camps and other violent means of producing and controlling bare life It comes as no surprise, then, that he does not seek to articulate a more precise, more empirical, or less dogmatic determination of the human-animal distinction. Such a distinction would only redraw the lines of the “object” of biopolitics and further define the scope of its reach. Thus instead of drawing a new human-animal distinction, Agamben insists that the distinction *must be abolished altogether*, and along with it the anthropological machine that produces the distinction. Recalling the political consequences that have followed from the modern and premodern separation of “human” and “animal” within human existence, Agamben characterizes the task for thought in the following terms: “it is not so much a matter of asking which of the two machines [i.e., the modern or premodern anthropological machine] … is better or more effective – or, rather, less lethal and bloody – it is of understanding how they work so that we might eventually, be able to stop them” (O,38).

#### The system of rights maintains an anthropocentric binary which allows genocidal violence – an absolute refusal is key

**Pugliese 13** – Research Director at Macquarie University (Joseph, “State Violence and the Execution of Law: Biopolitical Caesurae of Torture, Black Sites, Drones,” p.95-97)

Precisely because everything is always already at stake in the continued mobilization of biopolitical caesurae, the seeking of new articulations of life that will be valorized as more 'authentic' will merely reproduce the machine without having eliminated its capacity for violence as ensured by the re-articulation of the biopolitical cut. Looking back at the biopolitical infrastructure of the Nazi state, one can clearly see the imbrication of ecology, the regime of animal rights, and the racio-speciesist branding of Jews as collectively exemplifying the dangers of seeking more'authentic' articulations of animals and humans that are predicated on the biopolitical division and its capacity for inversions and recalibrations while leaving the violent order of the biopolitical regime intact. The Nazis effectively called for a more 'authentic' relation to nature ('blood and soil') that was buttressed by animal rights (Reich AnimalProtection laws) and the rights of nature (Reich Law on the Protection of Nature). 22 Animals and nature werethereby recalibrated up the speciesist scale at the expense of Jews. Deploying the violence of racio-speciesism, the Nazis animalized Jews as 'rats,' 'vermin' and other low life forms, situated them at the bottom of the biopolitical hierarchy, and then proceeded to enact the very cruelty and exterminatory violence (cattle car transport, herding incamps replicating stockyards and the industrialized killing procedures of animal slaughterhouses) that they hadoutlawed against animals. The Nazi state also exemplifies the manner in which the regime of (animal) rights can be perfectly accommodated within the most genocidal forms of state violence. This is so, precisely because the prior conceptof human rights is always-already founded on the human/animal biopolitical caesura and its asymmetry of power — otherwise the very categories of 'human' and 'animal' rights would fail to achieve cultural intelligibility. The paternal distribution of rights to non-human animals still pivots on this asymmetrical a priori. Even as it extends its seemingly benevolent regime of rights and protections to animals, rights discourse, by disavowing this violent a priori, merely reproduces the species war by other means